

**THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS**

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APPEAL FROM THE RICHLAND COUNTY  
COURT OF COMMON PLEAS

The Honorable Joseph M. Strickland, Master-in-Equity

**RECEIVED**  
JUL 11 2019  
SC Court of Appeals

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Appellate Case No.: 2019-000569

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Country Properties, LLC.....Appellant,

vs.

Nancy Dunn Martin.....Respondent.

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**REPLY OF APPELLANT**

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Attorneys for Appellant

July 10, 2019

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## REPLY ARGUMENT

In the Final Order of September 27, 2016, the lower court found an easement in favor of Appellant Country Properties (hereinafter “Country Properties”) pursuant to three separate and distinct theories—express easement, public dedication, and prescriptive easement. (See Final Order R. p.). Each of the three theories standing alone is sufficient to create a right in Country Properties across the lands of Respondent Nancy Dunn Martin (hereinafter “Respondent”). Respondent acknowledges this in her brief. (Respondent’s Brief, p. 1). Therefore, in order for this Court to affirm the lower court’s order granting a new trial pursuant to Rule 60(b)(2), Respondent was required to answer three essential questions: (1) How does the repair of a dam change the language of deeds creating an easement by express grant?; (2) How does the repair of a dam divest the public of a public road?; and (3) How does the repair of a dam change the finding of a prescriptive easement?

In both the lower court and in this Court, Respondent did not even attempt to answer the first two questions and thus failed to meet its burden of proof under Rule 60(b)(2), SCRPC and *Lanier v. Lanier*, 612 S.E.2d 456, 459, 364 S.C. 211 (2005)(“To obtain a new trial based on newly discovered evidence, a movant must establish that the newly discovered evidence: **(1) will probably change the result if a new trial is granted**; (2) has been discovered since the trial; (3) could not have been discovered before the trial; (4) **is material to the issue**; and (5) is not merely cumulative or impeaching.” (emphasis supplied)). The lower court, therefore, abused its discretion in granting a new trial. With regard to the third question, Respondent admits that “necessity” is not an element of a prescriptive easement, but the repair of the dam “shows a lack of full candor with the court.” Respondent’s Brief, p. 9. Respondent, however, provides no evidence of any lack of candor with the lower court and no evidence contradicting the trial testimony that the dam was

not in good repair at the time of trial. (Trial Transcript, pp. 352-361 R. pp.). In fact, Respondent originally brought her motion for a new trial pursuant to Rule 60(b)(3) alleging fraud, misrepresentation or other misconduct by Country Properties. Respondent did not prevail on that motion. Therefore, Respondent has not provided a sufficient answer to the third question.


The failure by Respondent to provide a sufficient answer to even a single one of the three questions demonstrates an abuse of discretion by the lower court in granting a new trial because the real answer to the three questions is: "It does not."

### **CONCLUSION**

For the reasons stated herein and in Appellant's Brief, the Order granting the Respondent's Rule 60(b), SCRPC Motion for a New Trial should be reversed and the September 27, 2016 Final Order should be reinstated.

Respectfully Submitted,

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**PROOF OF SERVICE**

I, the undersigned Paralegal at the law offices of Bundy McDonald, LLC, attorneys for Appellant Country Properties, LLC do hereby certify that on July 10, 2019 I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: Appellant’s Reply to Respondent’s Initial Brief; and  
Appellant’s Reply Designation of Matter

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July 10, 2019

**Via Fed-Ex Overnight Delivery**

The Honorable Jenny Abbott Kitchings  
Clerk of Court – The South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

RE: Country Properties, LLC. v. Nancy Dunn Martin  
Appellate Case No.: 2019-00569

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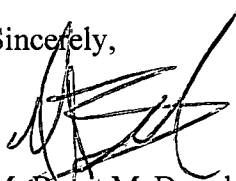
Dear Ms. Kitchings:

Enclosed please find an original and one (1) copy of Appellant's Reply to Respondent's Initial Brief, Appellant's Reply Designation of Matter and Proof of Service of the same upon all counsel of record.

Please file the original and return a filed stamped copy to us in the enclosed self-addressed envelope.

Thank you for your attention to this matter, and please do not hesitate to call me should you require anything further. With kindest regards, I remain

Sincerely,



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MBM/kjw  
Enclosure

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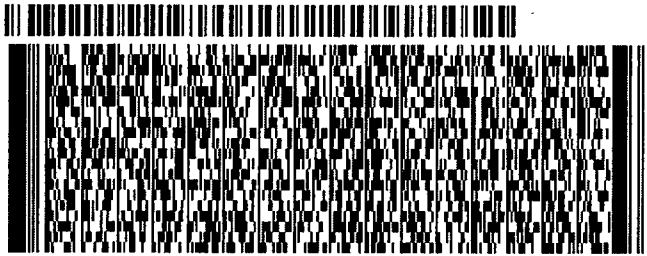
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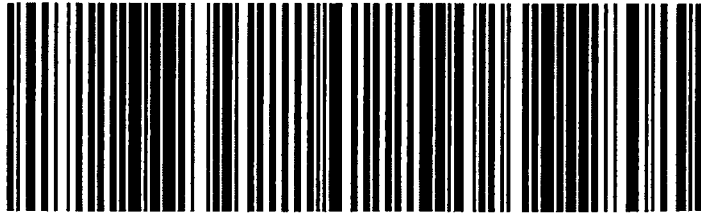


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